

APPENDIX G

HIPAA BUSINESS ASSOCIATE AGREEMENT

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BUSINESS ASSOCIATE AGREEMENT

**Applicable to CONTRACTORS or PROVIDERS that are
Business Associates of STATE under 45 CFR § 160.103**

This Agreement, is effective as of _____, 200 __, between the Hawaii Employer-Union Health Benefits Trust Fund (hereinafter the "STATE"), by its Administrator, whose address is 201 Merchant Street, Suite 1520, Honolulu, Hawaii 96813, and _____ (hereinafter "BUSINESS ASSOCIATE"), a _____, under the laws of the State of _____, whose business address is as follows: _____.

RECITALS

A. The STATE has procured the following goods and/or services from BUSINESS ASSOCIATE: _____;

B. BUSINESS ASSOCIATE's performance of the services may require that STATE disclose Protected Health Information (defined below) to BUSINESS ASSOCIATE, that BUSINESS ASSOCIATE use Protected Health Information disclosed to it by STATE, that BUSINESS ASSOCIATE create or receive Protected Health Information on behalf of the STATE, and/or that BUSINESS ASSOCIATE create, receive, maintain, or transmit Electronic Protected Health Information (defined below) on behalf of the STATE;

C. Both parties are committed to complying with the Privacy and Security Rules (defined below) with respect to Protected Health Information and Electronic Protected Health Information; and

D. This Agreement sets forth the terms and conditions pursuant to which Protected Health Information and Electronic Protected Health Information that is disclosed to, provided or used by, and/or created, received, maintained, or transmitted by BUSINESS ASSOCIATE from or on behalf of the STATE, will be handled.

TERMS AND CONDITIONS

1. Introduction: The STATE, as defined in this Agreement, has determined itself to be a Covered Entity or a Health Care Component of a Covered Entity under the Privacy and Security Rules. This Agreement relating to the privacy of Individually Identifiable Health Information (defined below) and the security of Electronic Protected Health Information is required by the Privacy and Security Rules because BUSINESS ASSOCIATE has been determined to be a "business associate" of the STATE as that term is used in 45 Code of Federal Regulations ("C.F.R.") § 160.103.

2. Definitions:

- a. Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the Privacy and Security Rules.
- b. Agreement. "Agreement" shall mean this agreement between STATE and BUSINESS ASSOCIATE, and any and all attachments, exhibits and special conditions attached hereto.
- c. Individual. "Individual" means the person who is the subject of Protected Health Information, and shall include a person who qualifies as a personal representative under § 164.502(g) of the Privacy Rule.
- d. Individually Identifiable Health Information. "Individually Identifiable Health Information" shall have the meaning set forth in 45 C.F.R. § 160.103.
- e. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E, as the same may be amended from time to time.
- f. Protected Health Information. "Protected Health Information" and "Electronic Protected Health Information" shall have the meanings set forth in 45 C.F.R. § 160.103. For purposes of this Agreement, the term Protected Health Information is limited to information that is disclosed to BUSINESS ASSOCIATE by the STATE and information that is created or received by BUSINESS ASSOCIATE from or on behalf of the STATE, and the term "Electronic Protected Health Information" is limited to information that is created, received, maintained, or transmitted by BUSINESS ASSOCIATE on behalf of the STATE.
- g. Secretary. "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or designee.
- h. Security Rule. "Security Rule" shall mean the Health Insurance Reform: Security Standards at 45 C.F.R. Part 160, Part 162, and Part 164, Subparts A and C, as the same may be amended from time to time.

3. Obligations and Activities of BUSINESS ASSOCIATE

- a. BUSINESS ASSOCIATE agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law.
- b. BUSINESS ASSOCIATE agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information consistent with the requirements of this Agreement.
- c. BUSINESS ASSOCIATE agrees to implement administrative, physical, and technical safeguards (as those terms are used in the Security Rule) that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the STATE, and further agrees to safeguard such information in accordance with any rules, policies, procedures, and directions adopted or implemented by STATE.

- d. BUSINESS ASSOCIATE agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information, agrees to the same restrictions and conditions that apply through this Agreement to BUSINESS ASSOCIATE with respect to such information. BUSINESS ASSOCIATE also agrees to ensure that any agent or subcontractor to whom it provides Electronic Protected Health Information agrees to implement reasonable and appropriate administrative, physical, and technical safeguards (as those terms are used in the Security Rule) to protect such information, and further agrees to ensure that any such agent or subcontractor shall safeguard such information in accordance with any rules, policies, procedures, and directions adopted or implemented by STATE.
- e. BUSINESS ASSOCIATE agrees to make internal practices, books, and records, including policies and procedures, Protected Health Information, and Electronic Protected Health Information available to STATE and/or to the Secretary, at reasonable times and places or as designated by the STATE and/or the Secretary, for purposes of determining compliance with the Privacy Rule or Security Rule.
- f. BUSINESS ASSOCIATE agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for STATE to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.
- g. BUSINESS ASSOCIATE agrees to provide to STATE or an Individual information collected in accordance with section f, above, to permit STATE to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.
- h. BUSINESS ASSOCIATE agrees to provide access to Protected Health Information in the Designated Record Set to STATE or, as directed by STATE, to an Individual to the extent and in the manner required by 45 C.F.R. § 164.524.
- i. BUSINESS ASSOCIATE agrees to make Protected Health Information available for amendment and to incorporate any amendments to Protected Health Information that the STATE directs or agrees to in accordance with the requirements of 45 C.F.R. § 164.526 at the request of STATE or an Individual.
- j. BUSINESS ASSOCIATE agrees to mitigate, to the extent practicable, any harmful effect that is known to BUSINESS ASSOCIATE of a use or disclosure of Protected Health Information or Electronic Protected Health Information by BUSINESS ASSOCIATE in violation of the requirements of this Agreement.
- k. BUSINESS ASSOCIATE agrees to report to STATE any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware. BUSINESS ASSOCIATE further agrees to report to STATE any security incident (as that term is defined in the Security Rule) of which it becomes aware.

4. Permitted Uses and Disclosures by BUSINESS ASSOCIATE

- a. General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, STATE as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by STATE or the minimum necessary policies and procedures of the STATE.
- b. Specific Use and Disclosure Provisions
 - (i) Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may use Protected Health Information for the proper management and administration of the BUSINESS ASSOCIATE or to carry out the legal responsibilities of the BUSINESS ASSOCIATE.
 - (ii) Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may disclose Protected Health Information for the proper management and administration of the BUSINESS ASSOCIATE, provided that disclosures are Required By Law, or BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BUSINESS ASSOCIATE of any instances of which it is aware in which the confidentiality of the information has been breached.
 - (iii) Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may use Protected Health Information to provide Data Aggregation services to STATE as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
 - (iv) BUSINESS ASSOCIATE may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

5. Permissible Requests by STATE. STATE shall not request BUSINESS ASSOCIATE to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by STATE, except if BUSINESS ASSOCIATE will use or disclose Protected Health Information for data aggregation or management and administrative activities of BUSINESS ASSOCIATE.

6. Termination for Cause. In addition to any other remedies provided for by this Agreement, upon STATE's knowledge of a material breach by BUSINESS ASSOCIATE of these special conditions, STATE shall either:

- a. Provide an opportunity for BUSINESS ASSOCIATE to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by the STATE; or
- b. Immediately terminate this Agreement if BUSINESS ASSOCIATE has breached a material term of this Agreement and cure is not possible; and

- c. If neither termination nor cure are feasible, STATE shall report the violation to the Secretary.

7. Effect of Termination.

- a. Upon any termination of this Agreement, until notified otherwise by STATE, BUSINESS ASSOCIATE shall extend all protections, limitations, requirements, and other provisions of this Agreement to: (i) all Protected Health Information received from STATE or created or received by BUSINESS ASSOCIATE on behalf of STATE; and (ii) all Electronic Protected Health Information created, received, maintained, or transmitted by BUSINESS ASSOCIATE on behalf of STATE.
- b. Upon any termination of this Agreement, STATE shall determine whether it is feasible for BUSINESS ASSOCIATE to return or destroy all or any part of: (i) all Protected Health Information received from STATE or created or received by BUSINESS ASSOCIATE on behalf of STATE; and (ii) all Electronic Protected Health Information created, received, maintained, or transmitted by BUSINESS ASSOCIATE on behalf of STATE. In connection with the foregoing, upon any termination of the Agreement, BUSINESS ASSOCIATE shall notify the STATE in writing of any and all conditions that make return or destruction of such information not feasible and shall provide STATE with any requested information related to the STATE's determination as to whether the return or destruction of such information is feasible.
- c. If STATE determines that return or destruction of all or any part of the Protected Health Information and Electronic Protected Health Information is feasible, at STATE's option, BUSINESS ASSOCIATE shall return or destroy such information. If STATE directs that BUSINESS ASSOCIATE return or destroy all or any part of the Protected Health Information and/or Electronic Protected Health Information, it is understood and agreed that BUSINESS ASSOCIATE shall retain no copies of such information.
- d. If STATE determines that return or destruction of all or any part of the Protected Health Information and Electronic Protected Health Information is not feasible or opts not to require the return or destruction of such information, BUSINESS ASSOCIATE shall extend the protections, limitations, requirements, and other provisions of this Agreement to such information for so long as BUSINESS ASSOCIATE maintains such information.
- e. The provisions of this Section 7 shall apply with respect to all terminations of this Agreement, for any reason whatsoever, and to any and all Protected Health Information and Electronic Protected Health Information in the possession or control of any and all agents and subcontractors of BUSINESS ASSOCIATE.

8. Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section in effect or as amended.
- b. Amendment. BUSINESS ASSOCIATE and STATE agree to take all actions necessary to amend this Agreement in order for STATE to comply with the

requirements of the Privacy Rule, Security Rule, and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 ("HIPAA"). All amendments shall be in writing and executed by both parties.

- c. Survival. The respective rights and obligations of STATE and BUSINESS ASSOCIATE under Section 7 above, shall survive the termination of this Agreement.
- d. Interpretation. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the Privacy and Security Rules, as amended, the Privacy and Security Rules shall control. Where provisions of this Agreement are different than those mandated in the Privacy or Security Rules, but are nonetheless permitted by the Privacy or Security Rules, the provisions of this Agreement shall control. Any ambiguity in this Agreement shall be resolved to permit STATE to comply with the Privacy Rule, Security Rule, and HIPAA.
- e. Third Parties. This Agreement is solely between BUSINESS ASSOCIATE and the STATE, and may be enforced only by BUSINESS ASSOCIATE or the STATE. This Agreement shall not be deemed to create any rights in any third parties or to create any obligations or liabilities of BUSINESS ASSOCIATE or the STATE to any third party.

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST
FUND ("STATE")

By _____

Its Administrator

Date: _____, 200__

("BUSINESS ASSOCIATE")

By _____

Its _____

Date: _____, 200__

Deputy Attorney General